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Expulsion of aliens

Texts and titles of the draft articles adopted by the Drafting Committee on second reading

Expulsion of aliens

Part One
General provisions

Article 1[1]
Scope

1. The present draft articles apply to the expulsion by a State of aliens present in its territory.

2. The present draft articles do not apply to aliens enjoying privileges and immunities under international law.

Article 2
Use of terms

For the purposes of the present draft articles:

(a) "expulsion" means a formal act or conduct attributable to a State, by which an alien is compelled to leave the territory of that State; it does not include extradition to another State, surrender to an international criminal court or tribunal, or the non-admission of an alien to a State;

(b) "alien" means an individual who does not have the nationality of the State in whose territory that individual is present.

[1] The numbers of the draft articles, as previously provisionally adopted by the Commission, are indicated in square brackets.

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Article 3
Right of expulsion

A State has the right to expel an alien from its territory. Expulsion shall be in accordance with the present draft articles, without prejudice to other applicable rules of international law, in particular those relating to human rights.

Article 4
Requirement for conformity with law

An alien may be expelled only in pursuance of a decision reached in accordance with law.

Article 5
Grounds for expulsion

1. Any expulsion decision shall state the ground on which it is based.

2. A State may only expel an alien on a ground that is provided for by law.

3. The ground for expulsion shall be assessed in good faith and reasonably, in the light of all the circumstances, taking into account in particular, where relevant, the gravity of the facts, the conduct of the alien in question or the current nature of the threat to which the facts give rise.

4. A State shall not expel an alien on a ground that is contrary to its obligations under international law.

Part Two
Cases of prohibited expulsion

Article 6
Rules relating to the expulsion of refugees

The present draft articles are without prejudice to the rules of international law relating to refugees, as well as to any more favourable rules or practice on refugee protection, and in particular to the following rules:

(a) a State shall not expel a refugee lawfully in its territory save on grounds of national security or public order;

(b) a State shall not expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where the person's life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion, unless there are reasonable grounds for regarding the person as a danger to the security of the country in which he or she is, or if the person, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 7
Rules relating to the expulsion of stateless persons

The present draft articles are without prejudice to the rules of international law relating to stateless persons, and in particular to the rule that a State shall not expel a stateless person lawfully in its territory save on grounds of national security or public order.

Article 8 [9]
Deprivation of nationality for the purpose of expulsion

A State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her.

Article 9 [10]
Prohibition of collective expulsion

1. For the purposes of the present draft article, collective expulsion means expulsion of aliens, as a group.

2. The collective expulsion of aliens is prohibited.

3. A State may expel concomitantly the members of a group of aliens, provided that the expulsion takes place after and on the basis of an assessment of the particular case of each individual member of the group in accordance with the present draft articles.

4. The present draft article is without prejudice to the rules of international law applicable to the expulsion of aliens in the event of an armed conflict involving the expelling State.

Article 10 [11]
Prohibition of disguised expulsion

1. Any form of disguised expulsion of an alien is prohibited.

2. For the purposes of the present draft article, disguised expulsion means the forcible departure of an alien from a State resulting indirectly from an action or an omission attributable to the State, including where the State supports or tolerates acts committed by its nationals or other persons, intended to provoke the departure of aliens from its territory other than in accordance with law.

Article 11 [12]
Prohibition of expulsion for the purpose of confiscation of assets

The expulsion of an alien for the purpose of confiscating his or her assets is prohibited.

Article 12 [13]
Prohibition of resort to expulsion in order to circumvent an ongoing extradition procedure

A State shall not resort to the expulsion of an alien in order to circumvent an ongoing extradition procedure.

Part Three
Protection of the rights of aliens subject to expulsion

Chapter I
General provisions

Article 13 [14]
Obligation to respect the human dignity and human rights of aliens subject to expulsion

1. All aliens subject to expulsion shall be treated with humanity and with respect for the inherent dignity of the human person at all stages of the expulsion process.

2. They are entitled to respect for their human rights, including those set out in the present draft articles.

Article 14 [15]
Prohibition of discrimination

The expelling State shall respect the rights of the alien subject to expulsion without discrimination of any kind on grounds such as race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status, or any other ground impermissible under international law.

Article 15 [16]
Vulnerable persons

1. Children, older persons, persons with disabilities, pregnant women and other vulnerable persons who are subject to expulsion shall be considered as such and treated and protected with due regard for their vulnerabilities.

2. In particular, in all actions concerning children who are subject to expulsion, the best interests of the child shall be a primary consideration.

Chapter II
Protection required in the expelling State

Article 16 [17]
Obligation to protect the right to life of an alien subject to expulsion

The expelling State shall protect the right to life of an alien subject to expulsion.

Article 17 [18]
Prohibition of torture or cruel, inhuman or degrading treatment or punishment

The expelling State shall not subject an alien subject to expulsion to torture or to cruel, inhuman or degrading treatment or punishment.

Article 18 [20]
Obligation to respect the right to family life

The expelling State shall respect the right to family life of an alien subject to expulsion. It shall not interfere arbitrarily or unlawfully with the exercise of such right.

Article 19
Detention of an alien for the purpose of expulsion

1. (a) The detention of an alien for the purpose of expulsion shall not be arbitrary nor punitive in nature.

(b) An alien detained for the purpose of expulsion shall, save in exceptional circumstances, be separated from persons sentenced to penalties involving deprivation of liberty.

2. (a) The duration of the detention shall be limited to such period of time as is reasonably necessary for the expulsion to be carried out. All detention of excessive duration is prohibited.

(b) The extension of the duration of the detention may be decided upon only by a court or, subject to judicial review, by another competent authority.

3. (a) The detention of an alien subject to expulsion shall be reviewed at regular intervals on the basis of specific criteria established by law.

(b) Subject to paragraph 2, detention for the purpose of expulsion shall end when the expulsion cannot be carried out, except where the reasons are attributable to the alien concerned.

Article 20 [30]
Protection of the property of an alien subject to expulsion

The expelling State shall take appropriate measures to protect the property of an alien subject to expulsion, and shall, in accordance with the law, allow the alien to dispose freely of his or her property, even from abroad.

Chapter III
Protection in relation to the State of destination

Article 21
Departure to the State of destination

1. The expelling State shall take appropriate measures to facilitate the voluntary departure of an alien subject to expulsion.

2. In cases of forcible implementation of an expulsion decision, the expelling State shall take the necessary measures to ensure, as far as possible, the safe transportation to the State of destination of the alien subject to expulsion, in accordance with the rules of international law.

3. The expelling State shall give the alien subject to expulsion a reasonable period of time to prepare for his or her departure, having regard to all circumstances.

Article 22
State of destination of aliens subject to expulsion

1. An alien subject to expulsion shall be expelled to his or her State of nationality or any other State that has the obligation to receive the alien under international law, or to any State willing to accept him or her at the request of the expelling State or, where appropriate, of the alien in question.

2. Where the State of nationality or any other State that has the obligation to receive the alien under international law has not been identified and no other State is willing to

accept the alien, that alien may be expelled to any State where he or she has a right of entry or stay or, where applicable, to the State from where he or she has entered the expelling State.

Article 23
Obligation not to expel an alien to a State where his or her life would be threatened

1. No alien shall be expelled to a State where his or her life would be threatened on grounds such as race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status, or any other ground impermissible under international law.

2. A State that does not have the death penalty shall not expel an alien to a State where the alien has been sentenced to the death penalty or where there is a real risk that he or she will be sentenced to death, unless it has previously obtained an assurance that the death penalty will not be imposed or, if already imposed, will not be carried out.

Article 24
Obligation not to expel an alien to a State where he or she may be subjected to torture or to cruel, inhuman or degrading treatment or punishment

A State shall not expel an alien to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Chapter IV
Protection in the transit State

Article 25
Protection in a transit State of the human rights of an alien subject to expulsion

A transit State shall protect the human rights of an alien subject to expulsion, in conformity with its obligations under international law.

Part Four
Specific procedural rules

Article 26
Procedural rights of aliens subject to expulsion

1. An alien subject to expulsion enjoys the following procedural rights:

(a) the right to receive notice of the expulsion decision;

(b) the right to challenge the expulsion decision, except where compelling reasons of national security otherwise require;

(c) the right to be heard by a competent authority;

(d) the right of access to effective remedies to challenge the expulsion decision;

(e) the right to be represented before the competent authority; and

(f) the right to have the free assistance of an interpreter if he or she cannot understand or speak the language used by the competent authority.

2. The rights listed in paragraph 1 are without prejudice to other procedural rights or guarantees provided by law.

3. An alien subject to expulsion has the right to seek consular assistance. The expelling State shall not impede the exercise of this right or the provision of consular assistance.

4. The procedural rights provided for in this article are without prejudice to the application of any legislation of the expelling State concerning the expulsion of aliens who have been unlawfully present in its territory for a brief duration.

Article 27
Suspensive effect of an appeal against an expulsion decision

An appeal lodged by an alien subject to expulsion who is lawfully present in the territory of the expelling State shall have a suspensive effect on the expulsion decision when there is a real risk of serious irreversible harm.

Article 28
International procedures for individual recourse

An alien subject to expulsion shall have access to any available procedure involving individual recourse to a competent international body.

Part Five
Legal consequences of expulsion

Article 29
Readmission to the expelling State

1. An alien lawfully present in the territory of a State, who is expelled by that State, shall have the right to be readmitted to the expelling State if it is established by a competent authority that the expulsion was unlawful, save where his or her return constitutes a threat to national security or public order, or where the alien otherwise no longer fulfils the conditions for admission under the law of the expelling State.

2. In no case may the earlier unlawful expulsion decision be used to prevent the alien from being readmitted.

Article 30 [31]
Responsibility of States in cases of unlawful expulsion

The expulsion of an alien in violation of the expelling State's obligations set forth in the present draft articles or in any other rule of international law entails the international responsibility of that State.

Article 31 [32]
Diplomatic protection

The State of nationality of an alien subject to expulsion may exercise diplomatic protection in respect of the alien in question.